QUID NOVI

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QUID NOVI

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IN THIS ISSUE...

EDITORIAL

by Andrea Gorys (Law II)
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After a wonderful game of volleyball (Go Sets on the Beach!!!) and a great time at trivia night, the unexpected happened to me: a black cat actually crossed my path! She checked me out with her green eyes and then ran away. Now I know it was November 1st so technically after Halloween, but still.... you never know.... So I decided to do some research and low and behold according to some sites a black cat crossing your path signifies an evil omen while according to others it's a sign of good luck! Historically because of the whole witchcraft fiasco, black cats got a bad rap but in fact in most European cultures consider running into them to be a good thing. Who knew? :)

Now a little announcement: the November 13th issue is our Well-Being Issue so please, please, please with a cherry on top forward us your articles about how you manage life and law, how you get rid of the stress, great food recipes and all good things. November has traditionally been one of those stress-ball months so let's try to diminish that as much as possible. Thank you!

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Let's Give Ourselves Something to Remember

by Andrew Biteen (Law III)

This Sunday is Remembrance Day. Many of us will sleep in; others will listen to John McCrae's verses at 11am and then move on to our regularly scheduled weekend programming. Only very few of us will take time to remember anything at all. Why would we; war has nothing to do with our daily lives. Whereas in the First World War, over 600,000 Canadians enlisted (out of a population of about 7.5 million), today's Canadian military has a regular force one tenth of that number, with about 25,000 reservists. Numbers like these explain how I could have gone almost 25 years without meeting a single Canadian soldier.

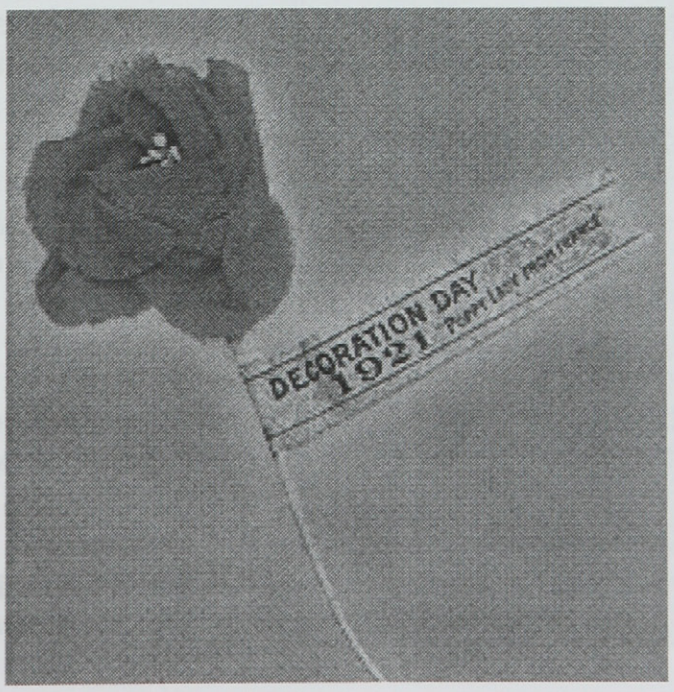
Both of my grandfathers fought in World War Two. Before that time, they were basically immigrants' children, living in ethnic ghettos of Montreal with little exposure to the rest of Canada, let alone the world. My grandfather (then 5'7", now a little less than that) tells me how he thought he was tall until he joined the Royal Canadian Air Force met "these well-fed boys from Saskatchewan who were 'this tall.'" My other grandfather fought on the fronts through Italy, side by side with his peers from the rest of Canada.

I am not lamenting my generation's absence of mass warfare (from 1914-1918, over 60,000 Canadian soldiers were killed, a horrific number that underscores why November 11 will always be important), but questioning whether a large part of citizenship is being lost on current generations. In these days of debates about reasonable accommodations laced with bigoted attacks on multiculturalism, there is more of a need than ever for all Canadians to engage with one another.

For this reason, I suggest that the Canadian government consider instituting a two-year mandatory service requirement from 18 to 20. I don't mean a military draft, but service to communities either in Canada or abroad. The benefits of such a program are numerous. Firstly, just as my grandfather met the "boys from Saskatchewan," and appreciated the country's diversity, young people from small-town Quebec would be hard-pressed to maintain their parents' views on immigrants after spending 2 years working with a young Tamil adult from Scarborough. Also, Canadians would develop a sense of service and responsibility for each other, which would preclude the wealthy from disregarding the interests of the poor in health care and education. Finally, this program would allow a chunk of the population with the most energy to put it to use.

Unlike the 1940's, when most 18-year-olds were already working and worrying about finding a spouse and establish a family by the time they were 25, today's 18 year old is more likely to be worrying about acne, video games, and how to stay awake during a first year psychology lecture delivered to hundreds of people. This is, in a sense, a luxury that Canada has built for its youth, who now view it as their birthright. However, in another light, this is the biggest wasted opportunity for nation building. Rather than sitting through uninspiring introductory university classes, why not be building schools in Nunavut? Rather than getting drunk on Crescent Street, why not help deliver food supplies to refugees in Palestine or Syria?

After the war, both my grandfathers returned to civilian life, started families, and moved to the suburbs. Yet, as we try to remember to remember what they did for Canada, let's also remember what we haven't■



RETOUR À LA TERRE

RÉFLEXION SUR L'ACTION DU MOVIMENTO SEM TERRA AU BRÉSIL

hrwg

Le Movimento Sem Terra forme le plus grand mouvement social d'Amérique latine. Fondé en 1984 avec l'appui des forces syndicales et religieuses réformistes du pays, au déclin de la dictature militaire ayant gouverné le pays durant plus de 20 ans, il a comme objectif premier la lutte pour la réforme agraire au Brésil. Le pays connaît en effet l'une des concentrations de la propriété de la terre parmi les plus élevées au monde, avec à peine 3% de la population qui possède plus de 65% des terres arables cultivables. Le MST cherche donc à ce que les immenses domaines à potentiel agricole qui demeurent inutilisés soient démantelés et redistribués démocratiquement aux paysans sans terre du pays (sur 30,6M de travailleurs ruraux, 25M ne possèdent pas de terre – la population totale du Brésil est de 186M d'habitants).

Le MST fonde son action sur l'article 184 de la Constitution fédérale du pays, qui énonce : « Il incombe à l'Union de s'approprier, par intérêt social, aux fins de la réforme agraire, le bien rural qui n'accomplit pas sa fonction sociale » [traduction]. Cette mince assise juridique sur laquelle repose l'ensemble de la lutte du mouvement est rarement appliquée, car la grande majorité des terres improductives ou laissées à l'abandon appartient à l'élite politique du pays. Celle-ci se montre plutôt réticente à s'exproprier au profit de la classe la plus défavorisée, d'autant plus que depuis l'époque coloniale portugaise, la propriété terrienne se veut un signe de pouvoir économique, social et politique particulièrement fort au Brésil.

Le MST recrute donc des gens sans terre, sans emploi, sans papier, et installe des campements d'occupation (acampamentos) en bordure des terres qu'il croit pouvoir obtenir en raison de leur caractère improductif. Son action politique voyante et dérangeante force l'État à enquêter sur le statut productif de la terre revendiquée et éventuellement à intenter un recours en expropriation contre le propriétaire. Les procédures juridiques sont longues et complexes et leur contestation est fréquente de la part du propriétaire ; il n'est pas rare que les acampamentos demeurent en place durant de nombreuses années, sans que rien ne bouge au niveau judiciaire. Lorsque l'État gagne finalement un procès d'expropriation, il fractionne l'immense propriété et la redistribue en petits lots égaux aux acampados, accomplissant le fameux intérêt social mentionné dans la constitution. Ces derniers deviennent alors assentados, assis sur la terre, et après 10 ans, par prescription acquisitive, ils en obtiennent la propriété.

Donc, des revendications à l'obtention de la propriété la terre, il n'est pas rare que 15 ou 20 années de lutte s'écoulent. L'accès à la terre se veut un prélude à l'intégration et à la reconnaissance sociale, à un travail digne, à l'éducation, à la santé, à la culture. Les gens qui choisissent de lutter au sein du MST pour plus d'égalité au sein de leur société y consacrent souvent leur vie entière. Or, rien n'est fait au niveau du droit pour leur faciliter la tâche, en raison des règles contraignantes d'expropriation, puis d'acquisition de la propriété, et de la faiblesse du droit social pour protéger les gens en attente d'une terre.

L'action du MST devient aussi de plus en plus difficile au fur et à mesure que les terres du pays sont vendues (par les politiciens, qui les possèdent en grande partie, rappelez-vous) à des intérêts étrangers. Ces derniers ont tôt fait de les rendre plus que productives, principalement pour leur exploitation massive à des fins énergétiques (le Brésil se transforme actuellement en un immense champ de maïs destiné à la production d'éthanol), ce qui réduit à néant l'argument constitutionnel du mouvement dans sa lutte pour une plus grande justice sociale.

Nous faisons grand cas en cette institution d'enseignement de l'importance de saisir le fondement des règles, leur raison d'être, les valeurs et les choix de politiques qu'elles véhiculent. Comment relier concrètement ce que nous apprenons, par exemple, en droit des biens, à la réalité de gens qui campent sous des toiles de plastique noir pendant des années ?

Quand j'étais au Brésil, la question de savoir à qui seraient dévolus les bijoux de famille en cas de divorce ne se posait même pas : les gens n'avaient pas de bijoux et ce qui importait, c'était de s'assurer que les rations de riz seraient bien distribuées dans les acampamentos.

Autre exemple : en droit de la concurrence, lorsque nous étudions les critères que les autorités considèrent dans l'évaluation des impacts d'une fusion ou acquisition pour un secteur névralgique de l'économie (énergie, transports, télécommunications), je garde en tête les champs d'eucalyptus qui pullulent au Nordeste afin de fournir la cellulose nécessaire à l'impression des grands quotidiens de ce monde.

Quelqu'un, quelque part, a déterminé qu'octroyer les terres et les ressources aquifères de cette région déjà semi-désertique à la firme Aracruz Celulose e Papel, quitte à dériver le 2e plus long fleuve du Brésil et à empêcher la population locale d'avoir accès à l'eau, pour irriguer des kilomètres de plantations servant à la fabrication de papier journal, était une bonne chose. Une bonne chose pour qui, ça, je n'ai pas la réponse. Les droits de l'homme sont présents, ou absents, dans le raisonnement justifiant l'ensemble des choix que les firmes, les gouvernements, les organisations font en fonction des intérêts qu'ils défendent. Je ne prétends pas livrer ici leur contenu

substantif ni définir tout ce que le concept englobe, mais par la lorgnette de ma mince expérience de cet été, je me questionne. Que veulent les êtres humains pour l'humanité ? Qu'est-ce que la dignité ? Qu'est-ce qu'une société développée ? Où faire entrer les droits dans ce casse-tête ? Il nous importe de réfléchir sur le mode d'organisation de notre société, sur les finalités que nous poursuivons et sur les impacts de nos choix sur les autres peuples de la Terren■

RAINY DAY RANT OR UMBRELLA: HOW DO WE QUALIFY "ABANDONED" PROPERTY?

by Judit Illes (Law I)

Since all anecdotes of the Quid Novi seem to have some sort of "legal theme," let property, in particular forgotten property, be the legal issue for this humble submission. But before I dive in, I guess I should establish who I am so you can understand why I write.

I'm a self-professed loser - loser of things that is. And as such, I'm all about extending sympathy to fellow losers in any way I can. For all those whose biology dictates that they must forget the keys, the charger, and that very expensive camera (insert: personal sob), this one's for you.

So once upon a rainy day at the faculty, I lost an umbrella. It was a cheap little silver thing of no sentimental worth. A gift from one of those nice counter ladies at the Holt Renfrew, actually.

I entered my constitutional class and dropped the drenched umbrella on the side of the room. I made an important mental note not to forget to it. And as always, immediately forgot it. (I blame this on a distraction created by Prof. Gelinas' coordinated tie and kerchief combo. Thrilling every time, it was purple on this particular day.) Upon remembering the umbrella, I revisited the class, but it was simply NOT THERE. Frantically, (and with very little hope) I scurried from LSA to SAO and all other relevant acronyms I could think of. Finally, I accepted the idea of being soaked later. But surprise, surprise. Miracles do happen. Amidst the noise and haste of the usual student traffic next to the moot court, a silver twinkle caught my eye.

Across the room, a girl was sitting with her schoolbag and MY umbrella. Casually, I inched towards the "guilty party". Although I wanted to pounce on her, I instead opted for a nonchalant "is this yours?" She was quick on her feet, narrating some nonsensical story to save face. She then enthusiastically handed it over and chirped "I'm happy you found it". The sincerity of my little friend was seriously doubtful, but the incident was not enough to shake my belief in good will.

So, does good faith prevail among students? I'll let you be the judge. Perhaps given the fact that we are in L-A-W school, we should take a stab at being law-abiding citizens, even in the most mundane of contexts■

Lawmerick IX
by Francie Gow, Law IV

I'm not sure my conclusion is deep
But I have a deadline to keep
So I'll stifle my yawn
And pretend it's not dawn
I've got footnotes to go ere I sleep

The Thunder-storm Article

by Ilan Gabizon (Law III)

I think I can say with little hesitation that our society is predominantly a liberal one. Our school, McGill University, and especially our faculty of Law, is very liberal. I recall in my second year of undergraduate studies attending a series of speeches on gay marriage in the moot court. I recall one of the speakers, a conservative, expressing his disagreement with it. And, when the speaker had finished, I recall a student standing up (during the question period), going on a liberal tirade of some sort or other, to finally conclude that the speaker's opinions are tantamount to "hate speech." And then I recall hearing loud applause. During the applause, I looked over at someone sitting across from me, not moving, not applauding. Neither did I. And not because I necessarily disagree with gay marriage, but rather because I thought that the student's bold statement was ridiculous claptrap.

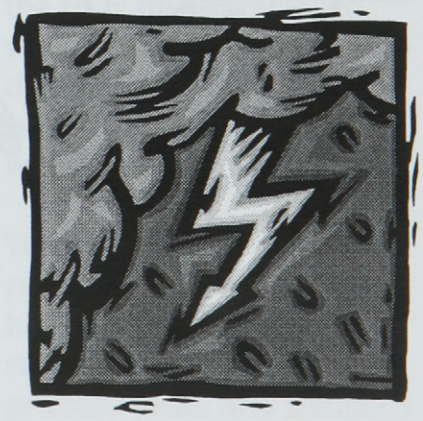
Hate speech? The speaker was aghast. He couldn't believe what he had heard. This law student was reasoning like a two-year old. "You don't agree with them, so you must hate them!!" Humbug! This, ladies and gentlemen, is the greatest tool of the liberal – the "hate speech" diatribe. That is how they force you to cower out of your convictions...

I just want to bring a very interesting point to your attention, and then I shall quit this idea. It is taught in our faculty (or at least it was taught to me in my first-year Foundations class) that the law does not apprehend morals as absolute, but rather as contextual, changing with the circumstance, changing with the times. (Or, if this is ever not the case, this is how the law should apprehend morals.) HOWEVER, our lawmakers in Parliament have understood that morals, to have any significance whatsoever, must be grounded in the absolute. You don't believe me, perhaps. Just open up your Charter of Rights and Freedoms, and you will read: "Whereas Canada is founded upon principles that recognize the supremacy of God..." Wait! What was that? The supremacy of God? Presumably the legislators have Yahweh in mind (we live in a Judeo-Christian society); but Supreme Court judgments in the last 20 years have been creating a morality that stands in explicit contradiction to Biblical standards! What then are they talking about? Well, it is in fact a contradiction – a "best of both worlds" solution. Whereas the legislature recognizes that a grounding in the absolute is absolutely necessary (no pun intended here), they do not want to be bound by an absolute standard. So they just cite this idea about the "supremacy of God," and thereby attempt to justify the bundle of morals that makes up our Charter. It's weak. But, to be sure, they needed to do it. Otherwise where else would they find the justification for the Charter? In our alleged evolutionary origin? Haha. I could just see it: "Based on the fact that we have been killing, murdering, and ravaging each other for millions of years, each one of us attempting to survive among the fittest, we now proclaim the right to free speech!"

* * *

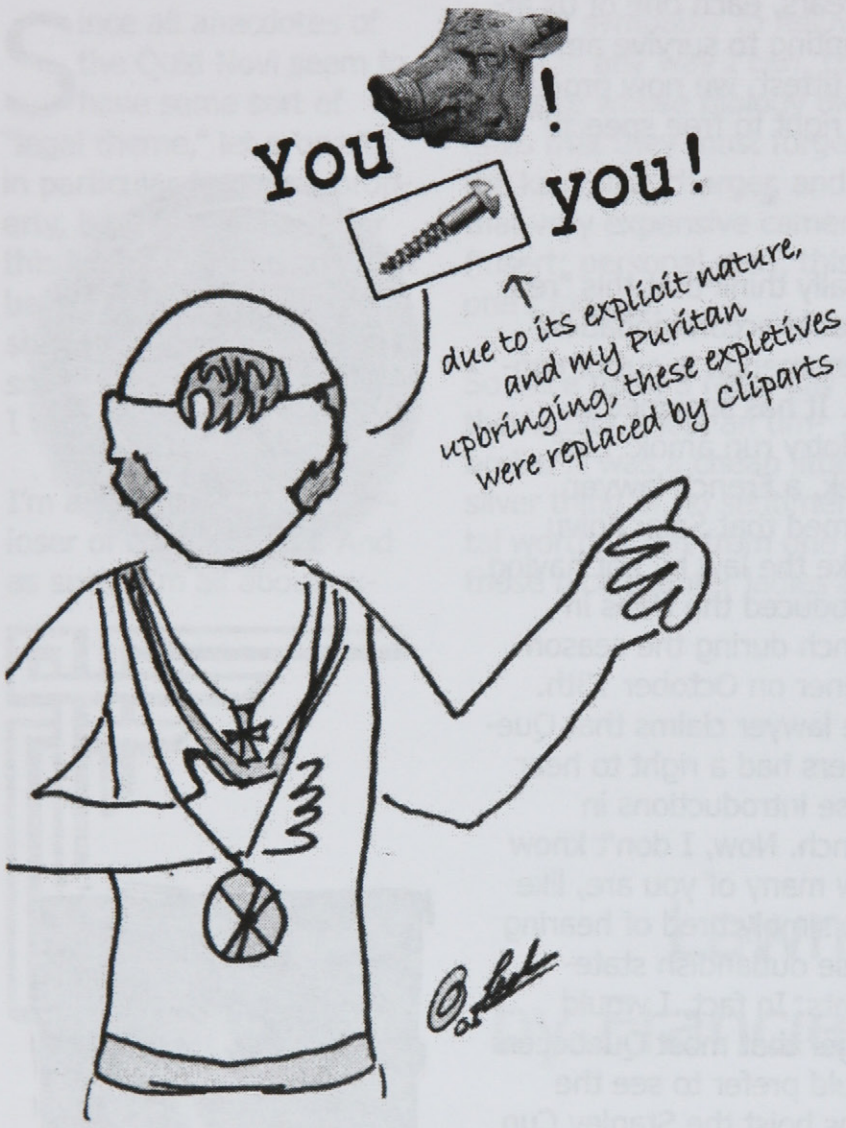
I really think that this "reasonable accommodation" phenomenon is out of control. It has spawned a zealotry run amok. Last week, a French lawyer claimed that Saku Koivu broke the law by not having introduced the Habs in French during the season opener on October 13th. The lawyer claims that Quebecers had a right to hear these introductions in French. Now, I don't know how many of you are, like me, simply tired of hearing these outlandish statements. In fact, I would wager that most Quebecers would prefer to see the Habs hoist the Stanley Cup than they would to hear Koivu speak in broken French. And this type of criticism will not attract athletes to this city. And I would venture to say that hockey is just as much a determinant in Quebec culture as language is...

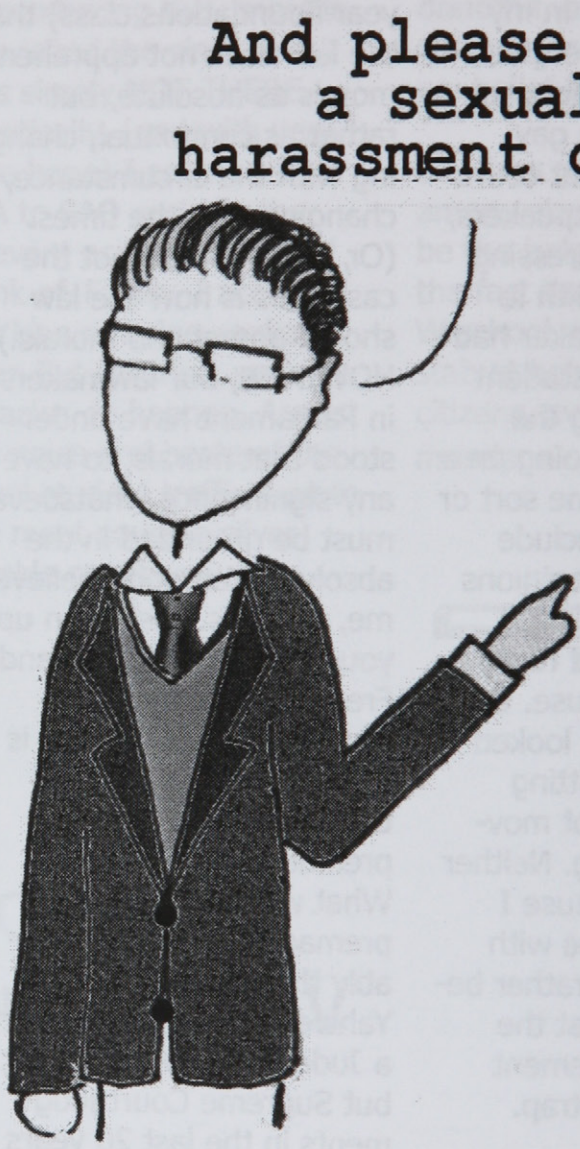
I was discussing this affair with a colleague of mine, and she brought something very interesting up. I shall reproduce it in full: "The last I heard, English is still one of the official languages of Canada. So if I am at a Habs game, and I only hear something in French, could I then argue that my rights to hear something in English were violated?" What's sauce for the goose is sauce for the gander...■



LES AVENTURES DU CAPITAINE CORPORATE AMERICA

by Laurence Bich-Carrière (LAW IV)





TUITION AT MCGILL: TAKING OUR RESPONSIBILITY SERIOUSLY

by Seth Earn (Law III)

Those who attended the LSA General Assembly on Tuition and Education Funding last Wednesday witnessed an hour of little substantive debate. The meeting managed to table every motion for later discussion. I give credit to the organizers for starting this debate, but they and their supporters seemed shocked that anyone would oppose the motions. Since no one was given an opportunity to explain why the motions should be tabled, let me present my own views on why I did not want to support any motion on Wednesday.

We lacked time and information. To have a healthy debate every motion should have been distributed well ahead of the General Assembly. Students need to know the entire scope of the debate in advance. We need to argue over lunch, to discuss in the hallways and hear different perspectives in order to come to a meeting and have substantive and informed positions.

The motions were too vague. To propose that the LSA should support "massive public reinvestment in the university system" sounds fine, but does it actually say anything? Would the LSA support a massive capital campaign where McGill builds ten new buildings? Do we want increased financial aid systems or do we want tuition lowered? If we take the step of positioning the LSA on these issues, we should be specific.

The motions articulate problems instead of solutions. This is closely related to the previous point. Where is a massive reinvestment coming from? When this question was asked, the meeting seemed to veer into quasi-separatist arguments about the federal surplus and transfer payments. I won't bother to debate that here, but if this is where we see the 'reinvestment' coming from, it should be explicitly stated. If we want higher taxes, let's say that. If we want money diverted from healthcare that should be said. We're smart, well educated law students, we should provide answers.

Recognize the divide between in-province and out-of-province tuition. From my perspective, the debate on Wednesday seemed largely divided between Francophone and Anglophone students. This is clearly a generalization, but let my try to articulate why I think this divide exists. As we all know, those designated as "out-of-province" pay at least double the tuition as Québec and France residents, There are many Québec taxes that I do pay, and I have not lived with my parents in Ontario for ten years, so the justification for this differential eludes me. Out-of-province students inevitably view debates on tuition from this perspective: viewing McGill's tuition fees as relatively low compared to other provinces, but also wondering why student movements in Québec tend to ignore this inequality and will often compromise out-of-province tuition levels for the sake of lower in-province fees. If the issue is truly "access to education" shouldn't lower out-of-province fees be the first goal? At the very least, such recognition might increase the motivation of those students designated as "out-of-province" to engage in these discussions.

Are we helping the right people? Since we're talking about the LSA, I'll keep the conversation focused on McGill Law. Here is my current stance, and I am happy to be proven wrong: Law school tuition freezes are not about helping the poor. I want to see the numbers on how many students do not go to law school solely because of the tuition fees. When the monetary rewards of a law degree are potentially enormous, high tuition fees should only affect those wanting to go into public-interest law. Let's be clear: Law school is an elitist institution. We take the law, a public instrument, and make it hard to understand; thus perpetuating a concentration of power in the elite. Low tuition will not solve that problem. Low tuition will not help poor people go to law school (there are many other projects that would help). Low tuition will subsidize middle to upper-class law students, some of whom will go on to make huge salaries upon graduation. I do not see a good justification for why taxpayers should heavily subsidize those students (and I include myself in this group). Granted, tuition should not be so high that students are forced to enter corporate law upon graduation. But can we not come up with better, more equitable and more targeted solutions? What if the LSA calls for a more generous loan system, paid for by higher tuition, which forgives student loans for those that choose to enter low paying public interest jobs? This could reduce the government's role in subsidizing middle to upper class students who go on to make extravagant salaries, allowing the savings to be directed towards the truly underprivileged, while ensuring that law students can devote themselves to public service without enormous debt.

Whatever motions are proposed, we have a responsibility as law students to recognize our privilege and propose ideas and solutions that truly target the less fortunate. Let's start taking our responsibility seriously■

SPECIAL GENERAL MEETING-TURNED-GONG SHOW

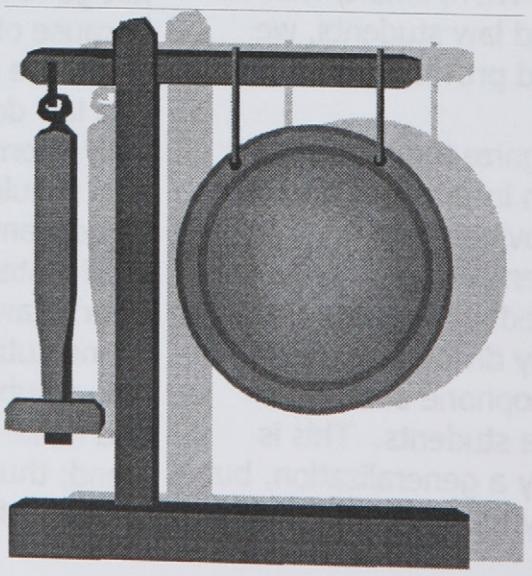
by Lissa Greenspoon
McGill Radical Law Community

As a student at this faculty, I am extremely disappointed with the manner in which the Special General Meeting on access to education was run on Wednesday, 31 October. The purpose of a General Meeting is to gather students of our faculty to debate and vote on a number of motions that were put forth by a colleague on an issue that is important to many of us. Such a Meeting is essential to the proper functioning of direct democracy in an academic institution and serves as a forum for facilitating discussion in a friendly and open environment.

The student turn-out for the Meeting was impressive, indicating a strong desire on the part of the student body to express their views on whether the LSA should take a position in the debate on access to education. Students of the faculty and members of the LSA alike were encouraged to attend the Meeting, debate the motions, and eventually vote on them. Those who were against the idea that the LSA take a position on this issue were free to vote against every motion proposed. In fact, they were encouraged to come to the Meeting and share their views, to gather their colleagues who also oppose the motions and, in so doing, to participate in the great tradition of direct democracy.

Unfortunately, the Meeting was undermined by an unprepared, uninformed, and obviously hostile Speaker of the LSA, as well as by members of the LSA executive. The LSA executive made it clear that they opposed the very idea of holding such a Meeting, despite the fact that the LSA Constitution (see art. 6) gives students the right to propose General Meetings. Members of the executive created an intimidating environment in which many students were not comfortable expressing their views. Further, these same LSA executive members gave the impression that there was an inherent conflict between this form of direct democracy and the type of representative democracy that elected its members and gave it its mandate. This is blatantly false. Direct democracy and representative democracy work in tandem and their ability to do so peacefully is indicative of a well-functioning democratic system. Apparently this is not the case at the Faculty of Law. Students who attended the Meeting, both those in favour of the motions and those opposed to them, were confronted with a Speaker who had done very little preparation for his role. The Speaker was clearly unfamiliar with the Robert's Rules of Order, which outline the required procedures for such a Meeting; he continually deferred to the student who proposed the Meeting, as well as to the LSA president, instead of answering questions addressed to him and reading the motions himself, as is required of a Speaker. Further, his knowledge of what constituted a point of information or a point of order was limited. Such conduct is a direct violation of Robert's Rules, and he, along with other members of the LSAdemonstrated from the start that he was hostile to the very idea of the Meeting.

I recognize that the practice of holding General Meetings is relatively unknown in the Faculty of Law and that, as such, it is expected that the Speaker will occasionally err with regards to the procedures required to carry out such a Meeting. However, the procedural errors at issue here were not minor but directly impeded the democratic process. It is important to note that the Speaker had nearly three weeks to prepare himself for the Meeting by studying the rules on procedure for General Meetings in Robert's Rules. The manner in which the Meeting was carried out revealed that there was an unwillingness to take this initiative seriously, and the result was that many students left the Meeting with an unpleasant taste in their mouths. It is doubtful that many will again wish to participate in this type of democratic initiative. This is shameful. We are, after all, future lawyers. If we cannot encourage free and open debate within the Faculty of Law, perhaps we should rethink our choice of career■



A Space for Debate

by Alexandra Dodger (Law I)

Democracy is about more than just voting. It needs a place where people feel comfortable speaking their minds, engaged participants committed to the results of the democratic process, and institutions interested in soliciting how their constituents feel. On the surface, the notion of a Special General Assembly held by the LSA last week was a democratic one. However, with members of the LSA executive challenging whether general assemblies should have any power to inform the direction of the organization, a poorly managed meeting where only 1 of the 4 motions submitted was actually discussed, and a tragicomic series of misinterpretations of the rules of procedure, it's fair to say democracy was thoroughly undermined. We emerged without a clear picture of where the student body stands.

Instead, we can see certain individuals seemed hostile and antagonistic towards the notion of a public debate from the very beginning, such as the VP whose Facebook status read "___is disgusted by political activists of all persuasions," shortly after the motions for debate were finalized.

Reluctantly, it seems, the General Assembly was held on October 31st in the Moot Court. Poorly advertised and poorly organized, 3 of the 4 motions submitted by Camille Bérubé had to be tabled, since the hour allocated was not nearly enough time to debate them all, especially when considering the myriad of procedural inquiries and foibles that dominated the assembly. This is not Camille Bérubé's fault. As a fee-paying member of the LSA, it was her right to call a special general meeting of our student union to discuss the current issues facing students in Quebec. However, it was not her responsibility to coordinate or promote this meeting, to answer procedural questions that the speaker didn't know how to, or to present a point-by-point plan of action on how the LSA executive would react to and interpret her motions.

Yet the LSA as an organization failed its members by not doing these things satisfactorily. Few people were aware of the motions we were to be voting on beforehand, the LSA did not help in their translation, and they did not facilitate an easy debate or dialogue. They left posters, much of the promotion, and even procedural interpretation to the submitter of the motions, as if all law students didn't have a stake in the outcome or as if the responsibility should have been hers alone. It was their job as our student association to create a functioning space for our voices and votes to be heard democratically, and the students that filled the moot court were let down by disorganization.

The LSA should be encouraging discourse and dialogue on the subjects of tuition fees, financial aid, and the public funding of post-secondary education. Instead, I witnessed a member of the LSA executive attempt to undermine the general assembly process by attempting to call for each and every motion to be ruled out of order on the grounds that the LSA had no business taking a position on post-secondary education. Student unions, and law student associations in particular, all across Canada have taken stances on public funding of universities, the regulation or freeze of tuition fees, and a plethora of other issues. Some law student associations have called for annual increases in fees, while others have called for the total elimination of user fees. Obviously law students at McGill should not be left out of this debate, especially at such a crucial juncture when for the first time in a decade, Quebec tuition fee policy is changing. The LSA should be in the forefront of advocating for a policy that will be in the interests of its members!

Instead, we have our Vice-President challenging the whether motions passed at a General Assembly can even be binding on the LSA at the judicial board, and with a facebook status that now reads "recommending that the faculty of law's bleeding hearts go on and bleed." It seems fundamentally antidemocratic to me that an LSA executive member should be trying to curtail the powers of a general assembly of its members.

I am not in support of increased tuition fees, but I respect the right of those who are to make their case for it. What I found most frustrating about the Special General Assembly was the fact that certain individuals refused to actually engage in a debate as to the merits of a tuition fee freeze, or increased government funding, but consistently tried to argue that the issues were not appropriate for debate, or that they were not within the purview of the LSA. It was an intellectually dishonest way to shift the debate away from the topic at hand. It left the Speaker uncertain how to respond, and he should not have demanded that Camille Bérubé or "the first year student" as he consistently referred to her, field all the procedural landmines that were thrown at him by those who were afraid to make the case in support of Charest's dégel. We shouldn't be afraid of taking a position, and holding general assembles. GA's don't have to be tools used to only advance one set of interests. Whether you support the tuition freeze or not, they are your vehicle to take a stand and tell your elected representatives what you think.

Other LSA executives were present at the meeting, and I appreciate the fact that they took the time to listen to the opinions of their constituents. I wish they would facilitate a proper forum or debate on the issues facing us. I know many students who chose to attend McGill for financial reasons; I don't want to see our tuition fees climb to the level of the University of Toronto law faculty where students are paying $19,676 per year. But maybe you think we shouldn't be advocating for the freeze. Speak out, demonstrate, organize and support the democratic process by attending the next General Assembly which the LSA will hopefully hold soon. Let's not remain silent ■

Tilting at Windmills

by John Lofranco (LAW I)

Last Wednesday, October 31, in the Moot Court, McGill law students were called together to discuss the issue of government investment in education, accessibility to education and tuition fees. Three resolutions were presented for debate and adoption, though in the end, only the first was adopted, and the rest were tabled for lack of time to adequately discuss the issues. The Quid seems like a good venue to examine the proposals.

The first motion, that the LSA should support a "massive public reinvestment" in education seems supportable at first. After all, we all want more money, "all the time," as one colleague offered. The problem with this motion is that it is vague, and it is also out of place. When asked to elaborate on where this massive reinvestment would come from, supporters of the motion cited the usual: government coffers. In other words, the money would come from the taxpayers. The LSA is not in a position to be providing advice to the government on policy. It is fair enough to say that we are in favour of more money for education, but what good does it do? The solution we offer is not a viable one, or at least, it is not a novel one. I'm sure the government knows that if it wanted to, it could divert more resources to education. There are members of the NA who remind them of this on a regular basis, I'm sure. It's not in the purview of the LSA to do so.

The second motion was divided in two, and focused on support for accessible education, as described in the International Covenant on Economic, Social and Cultural Rights. The oral explanation given here, by the student who proposed the motion, was that a student in any program (not just a money-making degree like good ol' law) should be able to get their degree and be able to support herself following it, without being saddled with debt. The implication of this is of course that university should be free. Should it?

The Universal Declaration of Human Rights says no: "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages." That's from Article 26 (1). Thinking like a lawyer, as we've been taught to do, I'm not sure that I would feel confident arguing that this means university education should be free. In Canada, we have free, state-funded education all the way to age 18. That's pretty accessible, if you ask me. In Quebec, there is even a post-secondary system (CEGEPs) that has very low tuition, and is quite accessible to anyone who wants to go.

The third and final motion was poetically rendered as positioning the LSA as against the "tuition fees de-freeze decreed by the Quebec government." That is some fine internal rhyme. But the motion does not tell us why the LSA specifically should be against this. I can think of a couple good reasons: we are lucky enough to attend one of the (always up for debate) "best" law schools in Canada (or even the world, depending on who you talk to), and we pay (forgive my lack of concrete stats) the lowest tuition for it (if you are a Quebec resident). If any faculty has reason and room to bump up fees, it is ours. But if we go on a faculty by faculty basis, law students are probably in the best position to handle a tuition increase. Even if a prospective lawyer doesn't opt for a big New York firm, or even a good Montreal firm, the chances that you are going to find meaningful, well-paying work are quite high. I am quite confident that the line of credit I have at a local bank is a smart investment on my part. In other words, we're gonna be fine. We're complaining with our belly full.

Ok, smart guy, you are saying, if you're not part of the solution, you are part of the problem. We are in a privileged position, but we should use that to help. Some people are suffering and the quality of education is falling. What can we do?

My solution would be to think long-term. That is the only way to effect real change. This isn't the 60s anymore, and protests, strikes, and parades are not going to help. Instead, focus your career towards government. Get involved politically, with a party that might actually form the government, and work from the inside out. Be the policy advisor for the minister of education. Be the minister of education. Seriously. Where do you think these people come from? They come from law school. Live your life in pursuit of lofty moral goals, instead of falling into the trap of the *courses aux stages*.

There is a reason why student movements never win. Student populations are transient. We come and go. So, student politics is just tilting at windmills. Enthusiastic first-years give way to busy second-years, who pass on to jaded third-years, to absent fourth-years. The government, while also in a 4-5 year cycle, is much more permanent. The university administration is here to stay. They've heard the arguments before. They will hear them again, from the next generation of students, if not on this topic, then on some other. I am not giving up, or being apathetic, or selling out by saying this. I am being realistic. We are at a huge advantage here at McGill law. Some of us <u>will</u> change the world. But not yet ■

L'ÉTRANGE NOTION DE SOCIÉTÉ ... ET L'ASSEMBLÉE GÉNÉRALE DE MERCREDI

par Camille Bérubé (LAW I)

En réponse, notamment, à un texte de John Lofranco. Puisque je suis étiquetée comme l'instigatrice de l'assemblée générale du 31, je répondrai en ce nom.

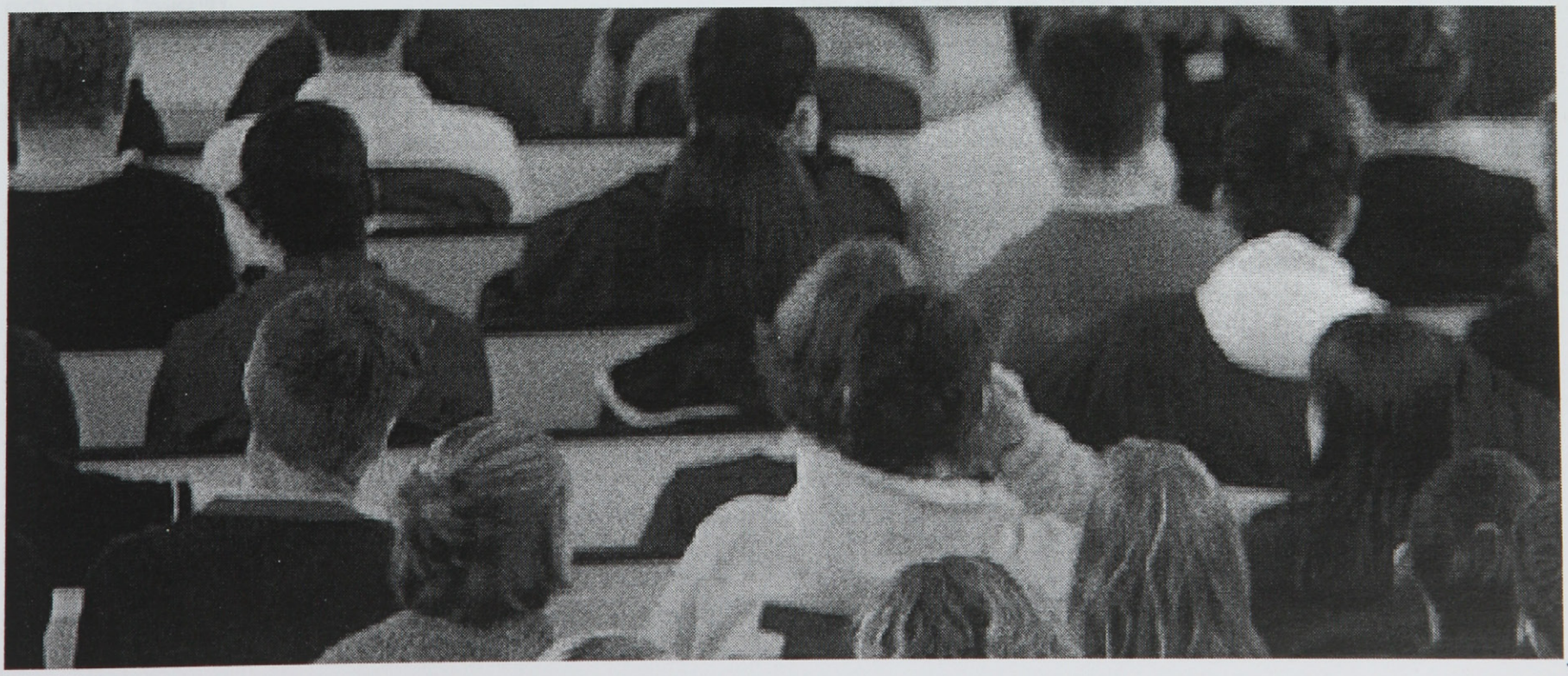
Premièrement, je veux mettre au jour un fait obscur : il est vrai que j'ai pris la parole en initiant une pétition qui a mené à cette assemblée générale, mais je n'étais pas seule. Je l'ai fait au nom del'organisme Radlaw et je crois que nous gagnerions à reconnaître une initiative collective plutôt que de vouloir absolument tout rattacher à l'individualité.

Au contraire, ce texte est rédigé en mon nom propre et n'engage que *mes* idées.

Je m'oppose à l'opinion exprimée comme quoi la seule façon efficace et réaliste de faire changer les choses est de s'implanter dans le gouvernement. Si le lobby peut se faire au niveau économique, je revendique le droit au lobby social. Il n'y a pas qu'une recette au changement social, et mes piètres connaissances de l'histoire semblent me dire que les peuples se sont généralement transformés avant les gouvernements. Le ou la ministre de l'éducation n'a pas le monopole de la connaissance sur ce domaine et il me semble que les étudiants sont biens placés pour témoigner de la réalité de ce système, peut-être même mieux que quiconque. Je rejette aussi l'allégation prétentieuse d'une classe politique formée dans les écoles de droit. Si le droit est essentiel à la construction d'un état, il ne doit pas en être la totalité. Ce ne sont pas des droits qui habitent ce pays, ce sont des personnes et peu de domaines d'études ne sont plus coupés de la réalité humaine que le droit par son raisonnement froid et détaché. Nous devons reconnaître à la population le droit de s'exprimer sur les enjeux qui la regarde en tant que collectivité; nous devons permettre la construction basée sur l'écoute du citoyen plutôt que sur la gestions d'intérêts.

Nous ne devons pas oublier non plus, chaque fois ou nous plaiderons l'égalité, que nous occupons une position privilégiée. L'égalité est une fiction dans notre société et le restera tant que nous ne reconnaîtrons pas le devoir que nous avons envers la collectivité. Notre position future nous permet de considérer notre éducation comme un investissement parce que nous savons que le nom de notre école et le domaine d'étude nous assurent de *rentabiliser* notre diplôme, alors que peu d'étudiants sont dans cette situation. Nous faisons partie d'une minorité pour qui le prix de nos études est un grain de riz comparé à la montagne qui représente nos revenus potentiels. Nous avons une dette envers la société de cette chance qu'elle nous donne.

Pour finir, je tiens à discuter d'une phrase de mon collègue à l'effet que « [t]here is a reason why student movements never win. » Je suis fondamentalement en désaccord. Je n'ai pas une bien longue expérience, pourtant je reconnais la création de l'UQÀM, le gel des frais de scolarité et la préservation du régime de prêts et bourse comme des réussites que l'on peut attribuer aux étudiants. Le mouvement étudiant représente une volonté de la jeunesse de participer aux débats sociaux à l'égal des autres citoyens. Allez-vous vraiment nous le reprocher?
■



JUST SAY THANK YOU!

by Rachel Sevigny (Law II)

With all of the judicial board hearings, special general meetings, midterms, homework, papers, and preparing for fall exams, it is really hard to sit down, relax, and not stress out. Personally, I have had a lot going on since July and I haven't been able to take a breather. Everywhere I go there is something to do – whether it is answering emails, being asked questions, going to class, running meetings, being a friend, a sister, and a daughter.

Being a law student on top of being everything else you are can really take its toll on you. If you are in first year, you are completely stressed out about being in law school, period. In second year, you are stressing because you actually have semester-long courses and exams are around the corner already. I am assuming that when you are in third, third and a half, and fourth year, you are stressing out to make sure that you actually have a life and career after law school. So as you can see from the first day you walk into NCDH, you are going to be stressed out until the day you leave this building three, three and a half, or four years after that.

The actual point to this article is not to say that we are all doomed, or that stress is inevitable for everyone – I very well may be wrong and just generalizing my experience and assuming that you all feel the same way. But you have to admit that there is this thick layer of awkward uneasiness that settles in every few weeks in the halls of NCDH that just makes you shiver and want to curl up in the foetal position (believe me, this is true - I have polled many friends). The point is to show you how to shake off this layer, to be able to not doubt yourself or feel guiltiness, and to realise that no, there wasn't a mistake made on the fourth floor, you do belong here and everyone knows it.

The cure for this uneasiness came to me when I was walking home with my friend, Téo, last week. We were at the library and talking about how it is hard to take a compliment and accept that compliment from a person and not brush it off. A lot of people actually do this; you know someone says like, "Oh, you are a hard worker!" and you respond by saying, "Nah...no I am not, I never work hard." See here, not only are you not accepting the compliment, but you are shafting the person who took the time out of their day to say something nice about you to you.

So while we were walking home we "played" this game and it lasted a good 10 minutes. What is this game you might ask? The THANK YOU game! It is simple: There is the Complimentee and the Complimentor. The Complimentor says something nice to the Complimentee; in return the Complimentee accepts the compliment from the Complimentor by saying THANK YOU. Once this transaction is complete, not only does the Complimentee feel better (and slightly less stressed) but so does the Complimentor because he or she feels appreciated. Do this back and forth for as long as you may desire. Believe me, you will feel better, your peers will feel better, and this layer of discomfort will slowly thin out and hopefully never come back (unfortunately, I cannot promise you this part).

Take what you may from this article, but I highly recommend you try it. Not only is it corny, but it sure is a lot of fun!

THANK YOU! ■

JUDGE TRIES SUING PANTS OFF OF DRY CLEANERS AS HIS PRICE FOR "SATISFACTION GUARANTEED" IS $65 MILLION

by Raffaela Commodari (LAW III)

Have any of you ever heard of T**he Stella Awards**?

For those of you who haven't, let me introduce you to something that you have been missing out on! The Stella Awards were inspired by Stella Liebeck. Recognize the name? Well, in case her name does not ring a bell, her lawsuit will! In 1992, Stella, then 79, spilled a cup of McDonald's coffee onto her lap, burning herself. (Starting to remember, aren't you!) A New Mexico jury awarded her $2.9 million in damages, which of course, was later decreased. Ever since, the name "Stella Award" has been applied to any wild, outrageous, or ridiculous lawsuit!
In case you are interested, here is a personal favourite of mine and the winner of the 2007 Stella Awards.

Imagine that someone has LOST YOUR PANTS.

That's the horrific, unending nightmare that Roy L. Pearson Jr., age 57, suffered for two and a half years. When his hard work as a long-time legal aid lawyer in Washington, DC paid off with a probationary two-year appointment as an Administrative Law Judge in 2005, he brought all five of his suits to "Custom Dry Cleaners" for alterations. But when he later returned to pick them up, one pair of pants was missing.

MISSING!!!

To add insult to injury, when Pearson returned later, the proprietors -- Jin and Soo Chung -- tried, he claims, to pass off a cheaper pair of pants as his. (The nerve!) He demanded $1,150 for a replacement suit; Pearson wanted to look his best, so he was very particular about his suits despite a limited budget, and always bought the same style of suit from Hickey Freeman. The Chungs did not respond.

Luckily, Washington, D.C., has the Consumer Protection Procedures Act (CPPA), a law designed to protect consumers from being cheated by local businesses' broken promises. This law goes beyond simply reporting someone to the Better Business Bureau, and grants a private right of action to sue for damages to be made whole again. After all, Custom Dry Cleaners brazenly displayed signs claiming "Same Day Service" and "Satisfaction Guaranteed" in their store, despite Pearson's catastrophic experience to the contrary. So he decided to avail himself of these rights and did what any one of us would do: he sued the Chungs -- for $65,462,500. That's right, more than $65 million!

OK, now it's not so funny anymore.

Judge Pearson represented himself, casting himself as the victim of an enormous, malicious fraud, and telling the court with a straight face, "You will search the D.C. archives in vain for a case of more egregious or willful conduct." He even began to cry while testifying about the day the Chungs tried to substitute a cheaper pair of pants for his, then he asked for a break and dabbed away tears as he left the courtroom. (He must really have loved those pants!)

But if it's sympathy he wants, perhaps Pearson should not have included the cost of renting a car every weekend in the amount of damages he's seeking. Why a car, you ask? Oh, that's for driving to another cleaner, since he doesn't have a car of his own. But that accounts for only $15,000 of the absurd total; the rest is to compensate him and the rest of the Chungs' customers for $1,500 per "violation" per day, times twelve violations, times 1,200 days, times three defendants, plus the over one thousand hours he claims to have devoted to prosecuting this case. If it makes you feel better, though, Pearson also indicated that $51 million of these theoretical damages would be used to help similarly aggrieved consumers sue other businesses in the District. (To be honest, this doesn't really make me feel better!)

By the time the case went to trial, the Chungs had offered to settle it for $3,000 -- then for $4,000 -- and finally for $12,000. Pearson could have bought ten new suits for that, but he rejected the offer. Cloaked in the CPPA, he styled himself a "private attorney general" fighting for the rights of the over 26,000 customers the Chungs had bamboozled over the years with their "false promises" of "satisfaction guaranteed" and "same day service".

Pearson also attempted to bring in all of the Chungs' 26,000 customers into the case. (I won't even touch upon the absurdity of having 26,000 witnesses!) Luckily, D.C. Superior Court Judge Neal Kravitz said that "the court has significant concerns that the plaintiff is acting in bad faith" (really?!) due to "the breathtaking magnitude of the expansion he seeks."

Pearson also demanded the Chungs identify by name, full address and telephone number, all cleaners known to them on May 1, 2005 in the District of Columbia, the United States and the world that advertise "satisfaction guaranteed." Got that? All

the dry cleaners in the world! Since they didn't have personal knowledge of any, (shame on them!) the Chungs answered "None." before they went on to answer the rest of the interrogatories.

The trial ended as you might expect (or at least hope) it would: Superior Court Judge Judith Barnoff ruled in favor of the Chungs, even awarding them court costs on the grounds that Pearson had "engaged in bad faith and vexatious litigation". (Look Professor Jukier, your J.I.C.P. lectures are coming to life!) But naturally, that wasn't the end of it: Pearson filed a motion for reconsideration, which claimed that Judge Barnoff had "committed a fundamental legal error" and failed to address his claims. He argued that the court had substituted its own interpretation of "satisfaction guaranteed" rather than accepting his argument that the signs were unconditional. The court disagreed and denied the motion.

The Chungs later withdrew their motion for court costs, attorneys' fees, and sanctions, perhaps in the hopes that withdrawing the motion would persuade Pearson to stop litigating.

But of course, it didn't: a day before the deadline, Pearson filed a notice of appeal in the pants lawsuit -- so the Chungs are not yet completely off the hook.

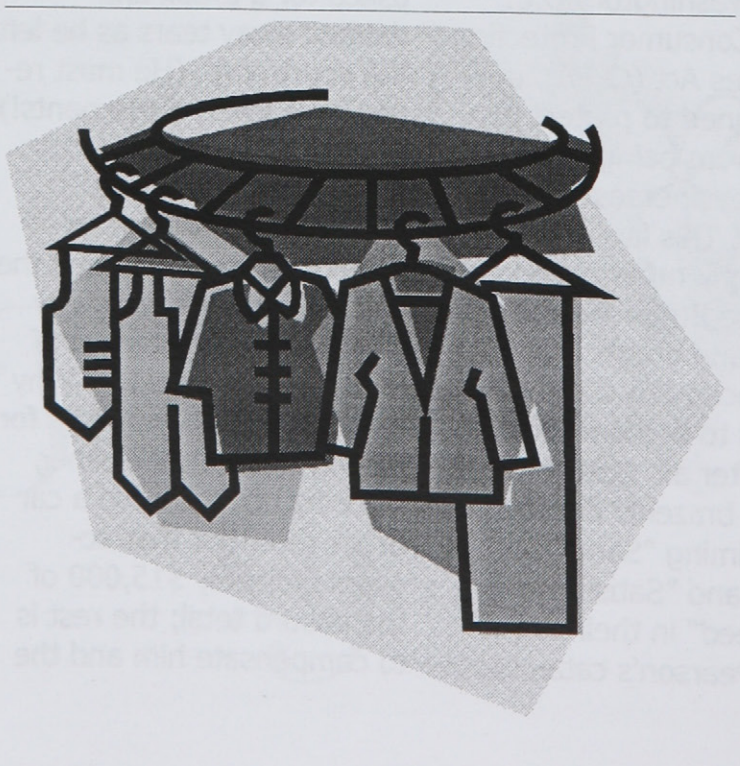
The loss wasn't the only blow to Pearson. In August, the Commission on Selection and Tenure of Administrative Law Judges was charged with deciding whether he should receive a full, 10-year term to continue his work as a judge. Reports from inside indicate that even after Chief Administrative Law Judge Tyrone Butler had submitted a letter recommending Pearson's reappointment, Pearson sent a number of e-mails within the ALJ staff calling Butler "evil" and "mean-spirited." Butler later changed his recommendation. Based on that, and on questions about Pearson's judicial temperament and ethics arising from the lawsuit, the commission came back with a unanimous decision not to recommend his reappointment. After two months of foot dragging (it's unclear whether by Pearson or by the Commission -- but we can guess), this week the Commission hand-delivered a letter ordering Pearson to clean out his office and get out within 90 minutes. As a judge, he would have been paid around $100,000 a year, enough to buy him plenty of pants!

What happened to the Chungs? Well, they sold the "Custom Dry Cleaners" shop in September, citing emotional strain and a loss of revenue. The infamous pants, meanwhile, have hung in their attorney's closet for well over a year -- turned over to him because Pearson wouldn't accept them, despite the fact that the tag matched his receipt!

In true McGill law fashion, what should we take from this case? I have learned in J.I.C.P. that judges are encouraged, if not required, to work harder to keep frivolous, and especially vexatious, suits out of the courts. How shocking, then, to find a judge who not only brings such an action to court himself, but keeps it going even in the face of unanimous condemnation. One could only imagine how much it cost the Chungs family to defend this case and how incredibly disenchanted they have become with the legal system. Although the unanimous action by the Commission on Selection and Tenure of Administrative Law Judges is heartening, perhaps it's time for Judge Pearson to lose his license to practice law.

While cases like this are often quite entertaining, there's also a deeper consideration that I think must be addressed: are the people involved in the cases using the courts to redress justifiable grievances that can't otherwise be settled, or are they trying to extort money from anyone they can? What about the lawyers involved? Are they champions of justice, or are they helping to abuse the system in the name of getting a piece of the action?

You be the judge! You can subscribe by e-mail for *free* to get the case reports of the latest Stella Award recipients, as they are issued. ■



Confessions about Recruitment

by Joshua Krane (LAW IV)

This article is addressed generally to my colleagues from Ontario, many of whom are off in Toronto looking for summer work among the nation's largest law firms. While many will come back with offers, others will undoubtedly return broken-hearted.

I participated in Toronto recruitment twice, and only once met with limited success. When I went through the process in my second year, I did not receive any offers. In my third year, the only offer that I received was from the Crown's office, although I had interviewed with several firms. Admittedly, I was not as prepared and certainly not as informed as I could have been. Recruitment did not consume my life, as perhaps it should have had I truly set my mind to the task of finding a job in Toronto. I believed that if I continued to live my life, be a good student, participate in extra-curricular activities, the work situation would come together.

This article will not re-hash my experiences in Toronto; my colleague's portrayal of his recruitment experience in the *Quid Novi* three weeks ago provided excellent insights into the recruitment process, and many of his sentiments and experiences I share. The point of this article is to say: all is not lost if you come back without any offers. The working world is replete with opportunities for eager students willing to look for them. Speaking from my own experience, the jobs that I found outside of the recruitment process have been my most rewarding and educational.

It is hard to let go of the mindset that firm jobs are markers of success for law students. We are conditioned, almost from week one at law school, to orient our thinking, or timetables, and our extra-curricular time to prepare us for firm life. Business and private law pre-occupies us in first and second year. Consider that we have twenty-four credits of mandatory property and obligations courses in our first two years alone. What we don't hear enough is that lawyers do plenty of things other than satisfying the legal needs of private businesses.

The traditional modes of looking for work also have not disappeared despite the focus placed on OCIs and recruitment. The *Law List* (found on the second floor of the library in the Reference Section) is a most useful job-search tool. It contains a list of lawyers across Canada, including where they work. When I was a first year student, I sent out close to one-hundred cover letters to lawyers in Ottawa. I ended up with a great job at Canada Post Corporation in legal affairs. They even agreed to interview me over the phone so I would not have to miss classes. I have never heard of a law firm extending such a courtesy during recruitment.

During my second year I also sent out a lot of correspondence, and was eventually hired by the Federal Prosecution Service. While in Ottawa the previous summer, I had met students who worked at FPS. I also spoke with classmates who had contacts there. Networking *within* our own peer group can lead to some fantastic experiences.

And even though I ended up working from the government last summer, it was a fabulous learning experience. I travelled across the province, worked with very skilled lawyers on cases followed closely by the newspapers, and ended my day at a reasonable hour.

Many McGill students do other things in the summer. They travel, do human rights work abroad, volunteer at a legal clinic, or find work elsewhere. We have our whole lives to work at law firms. In the end, the offers from the law firms will come for those willing and motivated to continue the job search process. But, after working elsewhere, you may come realize that in the end, you didn't miss out after all ■

Vers un accommodement raisonnable/ Towards a Reasonable Accommodation

by Claude Lévesque (Law III) et Alex Herman (Law III)

[The following was presented as a brief to the Bouchard-Taylor Commission on Reasonable Accommodation, which will come to Montreal on November 20 and 22, 2008.]

Introduction

Ce n'est pas une affaire récente que celle de tenter d'articuler en termes clairs ce que le Québec d'aujourd'hui est et ce qu'il sera demain. Traditionnellement, cette réflexion se définissait de par l'axe linguistique. C'est-à-dire, la protection et la survie d'une langue porteuse d'une culture. Par contre, depuis quelques années, grâce à l'internationalisation de la mobilité humaine, de nouveaux facteurs doivent être pris en considération. Il y a cinquante ans, la société québécoise était composée de groupes facilement identifiables et très homogènes. Il y avait les « anglais », les « canadiens français », les catholiques et les protestants. Tous, avec des racines européennes. Puis, il y a eu dans les années soixante, la révolution tranquille et l'émergence du concept moderne de nation québécoise. S'en est suivi des vagues d'immigrants qui ne venaient pas de l'Europe. En moins d'un demi-siècle, le visage québécois est devenu plus coloré et a pris des accents exotiques.

L'affaire serait toute simple si ce n'était qu'une question d'accent et de couleur. Cependant, nous commençons à peine, en tant que société, à voir les ramifications liés à une pluralité québécoise. Mais avant d'entrer dans le vif de notre réflexion, nous aimerions rapidement clarifier quel est le sujet de notre propos. Nous devons nous questionner sur quelle est la problématique réelle de cette commission. Oui, nous voulons parler d'accommodement raisonnable. Mais en quoi cela consiste reste encore nébuleux pour plusieurs. Une fois le sujet bien cadré, nous aborderons deux notions. D'une part, nous décortiquerons brièvement la notion d'appartenance. En second lieu, nous allons rapidement adresser le rôle mythique de la mémoire collective. Nous terminerons avec une courte élaboration sur le rôle des médias dans la formulation de ce qu'est l'accommodement raisonnable. Du même coup, nous ferons une mise en garde à la commission quant à la présentation de son message.

Un faux problème

Gilles Vigneault écrivait au début des années soixante la chanson *Mon Pays*. Cette chanson, analysée en long et en large, au tant par les universitaires que par érudits à temps partiels, est intéressante pour deux raisons. D'abord parce qu'elle a été écrite durant la décennie qui a vu naître l'identité nationale québécoise, cette même identité qui aujourd'hui semble peut-être souffrir de schizophrénie. Puis, parce que la première phrase de la chanson, « *mon pays, ce n'est pas un pays, c'est l'hiver* », donne une piste de la nouvelle identité québécoise en devenir et des bases à poser pour avoir un accommodement vraiment raisonnable.

La première partie de cette phrase clef (*Mon pays, ce n'est pas un pays*) présente une négation. Selon nous, il s'agit d'une négation de la proposition traditionnelle de la notion de pays. C'est que peu importe les critères classiques auxquels nous pouvons penser pour définir un pays, ce bout de phrase les rejettent. Les éléments traditionnels tels qu'un territoire fixe, une langue unique ou même une homogénéité culturelle ne sont plus les seules considérations pertinentes.

Cette négation que présente la chanson de Vigneault démontre un désir de définir autrement un pays, une nation, un peuple. C'est dans cette optique que la deuxième partie de cette phrase mythique prend tout son sens. « *C'est l'hiver* » est une affirmation pour de nouveaux caractères d'identification. Il s'agit d'un penchant pour une redéfinition face à ce que l'on voit et qui considère l'environnement dans lequel une société évolue. Le tout souligne l'importance de refléter la réalité.

À la lumière de cette courte analyse, il nous est maintenant possible de considérer l'accommodement raisonnable. Si le tout doit se jouer selon une notion de réalisme, deux réalités doivent être mises en évidence. D'abord, il y a celle du nombre et ensuite, celle du contact. La réalité est que le nombre de gens qui ne s'adaptent pas à la réalité d'ici est infiniment petit. C'est donc que l'impact direct sur la masse est très faible, ce qui est souvent oublié. La seconde réalité est celle du contact entre divers individus. Ce sont les interactions entre gens qui poussent à considérer divers accommodements. Or, il est impossible de définir au préalable toutes les situations possibles d'accommodements afin de définir ce que l'on considère raisonnable ou pas. Par contre, ce qui est possible et souhaitable, c'est de se questionner sur

les valeurs qui doivent guider nos décisions et nos comportements dans cette réalité « technicolor ».

Pour nous, la commission ne doit pas s'attarder sur les situations spécifiques et souvent inusitées. Mais plutôt, la commission doit travailler à définir les valeurs et la démarche à suivre dans l'élaboration d'accommodements raisonnables tant du point de vue de la communauté d'accueil que de ceux tentent de s'y intégrer. Plus loin dans ce mémoire, nous toucherons à la notion de « raisonnable ».

Belonging

In setting out the unifying elements of a cultural foundation, the commission proposed "un sentiment d'appartenance au Québec." What seems to be envisaged is not merely a community wherein each individual feels an equal attachment to the collective, but a community wherein each individual feels an attachment to a *symbol* of that collective. But how can such a feeling of belonging be possible?

A sense of "belonging" is beyond both the realm of empirical policy and the realm of the law. It is an individual choice, wrapped up in emotional and psychological causes. It would be impossible to force people – either through policy objectives or through specific laws – to belong to Quebec or Canada. Though it may seem an affront to self-subscribing citizens of the host society, many members of cultural minorities feel an attachment with more than one focus. In the same fashion, an individual can belong to a church, a community project, a neighborhood sports team, a province and a country *at the same time*. One can cheer for the Oceanic de Rimouski, the Canadiens de Montréal and Team Canada without feeling less of a partnership with each of these organizations. One does not have primacy over the others. They all share equal value within the range of an individual's choices.

Thus, the commission needs to be aware of the fluidity of identity. Second-generation Canadians, as well as immigrants, often have two strong sources of their identity: where they came *from* and where they came *to*. As Claude Lévesque, co-author of this paper and Haitian-born law student, has written in the *Quid Novi*, "J'ai deux chez moi. J'ai un terroir de grandeur et d'opportunités ici au Canada et une terre de chaleur tropicale et à l'arôme de café en Haïti." The Québécois need to be aware that this type of affiliation does not offend the majority society. If anything, it strengthens each bond. A citizen's will is not diluted because of more than one attachment. An attachment to one reinforces an attachment to the other. Practically speaking, if a Haitian-Quebecer returns to Haiti every year to connect with his "roots", he will become the unofficial ambassador of an open, tolerant Quebec society.

The issue, however, goes beyond Quebec, and even Canada. Fluid identities are a global phenomenon, depicted most eloquently in the novels and essays of Salman Rushdie, Arundhati Roy, Rohinton Mistry and Éric-Emmanuel Schmitt.

The less receptive a host society is of a minority culture, the more the host society will push an individual belonging to that minority culture towards the fringes of society. If Québécois society refuses to accept certain elements of the Islamic tradition, for example, those elements would be isolated from the mainstream and would become more extreme, not owing to any of society's compromise. Both the individual and the group would be forced to choose between the mainstream society and the cultural group. Many may choose the former – which is perhaps a good thing – though some, emboldened and embittered, will choose the latter.

If minority groups are not accommodated within Quebec society, they will seek their own solutions, outside the mainstream. As a more macroscopic example, consider the province of Quebec's relationship with the rest of Canada. At any threat of "assimilating" the Québécois into Canadian society, most of the population immediately fears the loss of their culture, history and language. The connection that most Québécois feel towards Canada must first be channeled through their attachment to the province. Many Québécois would agree that for them to feel attached to Canada, it would come as the result of Canada accepting them for what they are as Québécois. Why can the Québécois not use the approach espoused in dealing with federalism when they accommodate their own minorities? Can the lessons not come from moments of compromise and tolerance within our shared Canadian history – from the Quebec Act of 1774 to the Confederation compromise of 1867?

National memory

A focus too centered on the past can be dangerous. Any history "shared" among millions of people will have its victims, its ignorance and its minorities – much of which will be wiped out in order to make history palatable for school textbooks. Since it may be true that any history that pays too much attention to its negative aspects (known in academia as "victimology") can cause disunity and an aversion to the past, a pluralist society must approach its history in one of two ways:

1. The history can be made general. The events and characters of history must be presented in a universal light. They must not be shown as particular to the society of which they belong, but rather as part of a teleological movement of global importance. The teaching of history in American schools is an example. George Washington is not seen as a parochial general, tired of paying taxes on his vast wealth, but as a heroic fighter for the inalienable rights of freedom. Abraham Lincoln is not a deluded tyrant, but a great emancipator who believed in rights for all. If the Quebec history program can give Papineau, Lafontaine and Lévesque a similar universalist makeover, showing them as profound thinkers and not simply leaders fighting for their tribe, then a national memory could extend to newcomers. Because of the school system's focus on

nationalist figures, this may be difficult. Obviously, those who eschewed nationalism in favour of the grander ideals of rights and freedoms in a federal context, such as F.R. Scott and Pierre Trudeau, lend themselves more easily towards universalist history.

2. The other approach can be to negate history in favour of national hope, that which is progressive, all-inclusive and forward-thinking. Instead of remembering the battles,treaties and figures of the past, the civic Québécois must look towards a more diverse future. Such a future with its widely inclusive citizenry does not capture the inherent tribalism of differentiation, but instead relies on the collective imagination – as well as the tolerance for difference – of each individual. This is a more difficult task. Still – from the Israelites dreaming of Jerusalem to the first European *habitants* planning for a better future in this country – it has its precedents.

Un média averti en vaut deux

La société québécoise d'aujourd'hui est une société d'information à la Macdonald. Il est très facile d'avoir sa dose quotidienne d'information journalistique. Il suffit d'offrir la télévision ou l'ordinateur pour savoir ce qui s'est passé à cent mille lieux d'ici. Mais trop peu d'entre nous sommes conscients que cette information tout comme la bouffe de la restauration rapide, est pré-usinée. Parce qu'il est facile d'y avoir accès, très peu de gens prennent le temps de considérer la véracité, l'exactitude ou même le sensationnalisme de l'information. C'est dans ce monde d'information prémâchée que se déroule le débat sur l'accommodement raisonnable. La question de l'accommodement raisonnable a été victime de la rediffusion en masse. De part la place que les médias ont accordé à des situations atypique de difficultés d'intégration culturelle, la majorité des gens sont portés à croire à un crise de l'immigration et de l'identité québécoise. La réalité est que le citoyen, à force de se faire servir de l'information, à perdu l'habitude d'aller la chercher lui-même et de se questionner. Considérant ceci, il est important de se rappeler l'importance de maintenir une image claire de la réalité vécue au quotidien. Cette réalité est celle du contact entre gens d'appartenance diverse qui peuvent, si les bonnes valeurs sont véhiculées, aussi partager une appartenance commune.

Encore une fois, il est primordiale de se rappeler que la commission ne doit pas se prévaloir de régler la question de l'accommodement raisonnable par la résolution de situations spécifiques mais par l'élaboration d'un discours exposant des valeurs clefs afin d'avoir un dialogue continue et ouvert. Pour cela, la commission doit considérer tous les acteurs, les communautés d'accueil, les gens qui veulent s'y intégrer, ceux qui ont de la difficulté à s'y intégrer ainsi que les médias.

Ultimement, peu importe la direction que la commission prendra, son message sera influence par le monde médiatique. Donc, nous concluons notre réflexion avec cette mise en garde pour la commission : Comment sera présenté le résultat de cette commission est aussi important que le résultat lui-même. ■

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Daily SuDoku: Fri 2-Nov-2007 very hard

Response to S. Walker

by Stephanie Jones (Law III)

Thank you, Sam, for your response. As for the rest of our loyal readers, please accept my apologies that the genocide programming, like the genocide, isn't over quite yet.

Let's talk about mercenaries (I will concede the term "black knights"). I fully agree that refugees, as compared to diplomats, are as (if not more) deserving of protection. Unfortunately, the context is slightly different. Take Executive Outcomes. Yes, they quashed the RUF rebels in Sierra Leone, but at what price? Millions of dollars, sizeable diamond mining concessions, and the creation of a state of dependence. Refugees in conflict situations, unlike most diplomats, require not only security of their lives, but also the security of peace (preferably without the mortgaging of their futures). For this or other reasons, the Genocide Intervention Network "quickly concluded that going with mercenaries was a bad idea." According to their website, they and a local partner are working with refugees, community leaders, and AU peacekeepers towards the modest goal of protecting women from being raped while collecting firewood.

And let's talk about non-violence. I'm still not sure that genocide is a greater evil than either aggression (Iraq?) or indifference, in which latter respect it is a depressingly average tragedy. But you're right that what I find most disturbing is not so much your suggestion of mercenaries as your suggestion that preventing genocide requires sacrificing whatever principle to whatever form of military intervention. I'm not saying we didn't need peacekeepers in Rwanda, and I'm not saying we don't need them in Darfur. I'm just saying that in their absence, we might need pacifists as well as mercenaries.

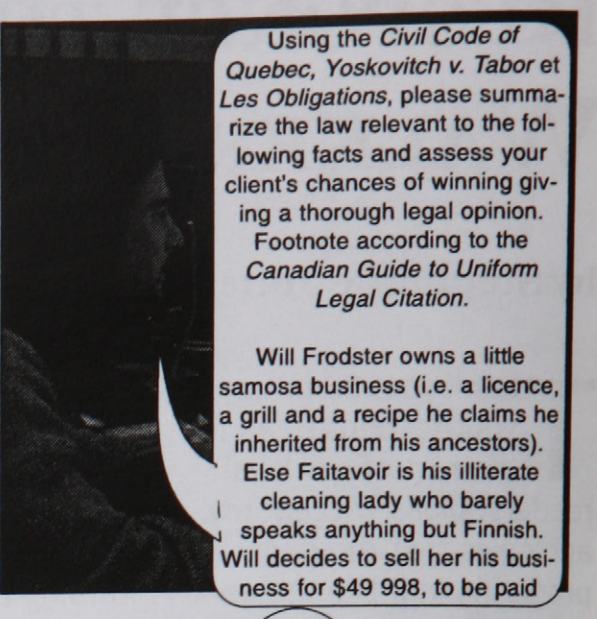
Unfortunately, pacifism sounds (and too often looks) a lot like passivism. Peace must be made before it can be kept, and non-violent intervention requires as much commitment as military intervention. No credible voice for peacemaking can also be a voice for taking violence into our own hands and sending in the mercenaries. I was profoundly moved by both Dallaire and Osman, and I won't pretend to understand what they have experienced or continue to experience. But theirs are not the only voices and, as Sam acknowledges, military intervention is not the only answer.

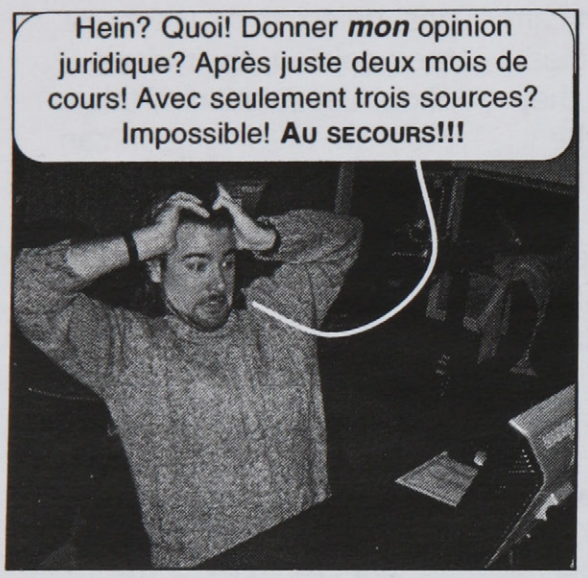
Let's hear from some other voices. Christian Peacemaker Teams (CPT), whose motto is "Getting in the way," calls Christians "to devote the same discipline and self-sacrifice to peace-making that armies devote to war." Although they are not present in Darfur, they are present at the request of local peace and human rights workers in Iraq. At the end of 2005, the entire team of four was kidnapped by the so-called Swords of Righteousness Brigade. After 118 days, one was killed and the other three were rescued by British SAS forces.

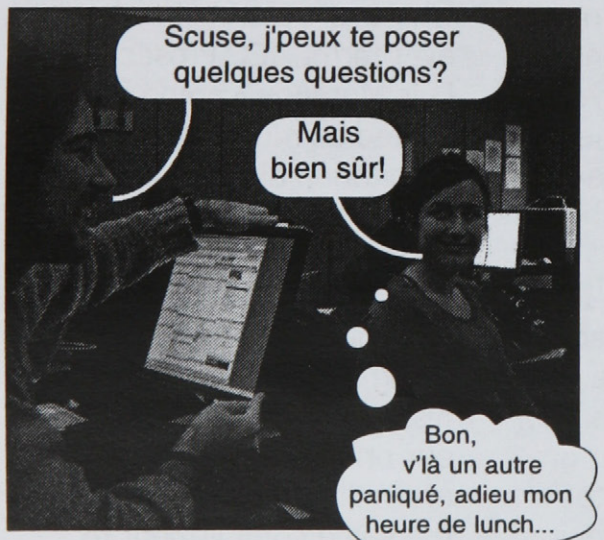
The three have spoken candidly about their struggles with non-violence, yet they remain committed to the idea(l). They have refused to testify against their alleged captors at trial, expressing concerns about fairness and the possibility of the death penalty and choosing forgiveness over punishment. CPT is still in Iraq, albeit having relocated from Baghdad to the Kurdish north. Na•ve? Maybe. Saving lives? Maybe not. But an important counterpoint to military intervention and mercenaries in the search for a secure peace? You decide.

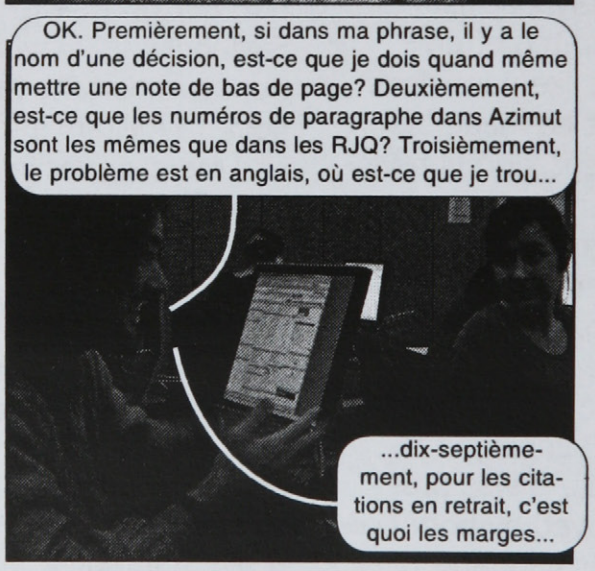
Admittedly, like Sam, I am not an expert, and Iraq is not Darfur. There is a good argument that interventionists in Iraq, military or otherwise, have chosen to place themselves in their situations in a way that Darfuri refugees have not. So, let's hear from some other voices from Darfur. The Genocide Intervention Network is working with refugees, community leaders, and AU peacekeepers in the camps. Joseph Akwoc of the Sudan Council of Churches (SCC) has been organizing joint peacemaking workshops for five ethnically mixed villages in southern Darfur, which he reports have been "very effective. They said, thank you, SCC, because we were not able to come together (before). ... We did not know how to talk to [one] another." These are not universal or perfect solutions, but they are examples of discussion and non-violent civilian empowerment in action, with or without international military support.

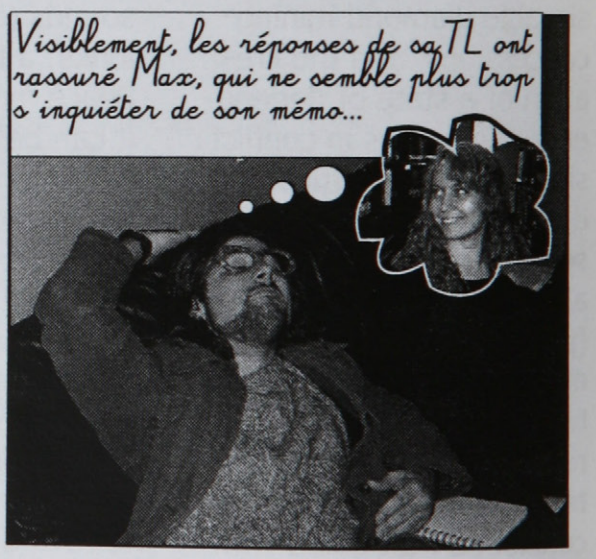
I share Sam's conclusion, as does Akwoc: "[T]he Darfurians, unless they ... express their opinion, their ideas about the solution of this problem, nothing good can be achieved." We all want to save lives and secure peace. Osman is calling for mercenaries, and Akwoc and other Darfurians are calling for dialogue. Sam is right that these solutions are not mutually exclusive, but I believe that I am also right that whatever voice cannot credibly call for whatever solution in whatever form. ICC Prosecutor Luis Moreno-Ocampo accepted as much when a humanitarian aid worker asked him about the conflict between humanitarian aid and international justice, and he told the aid worker to keep doing her job and let him do his. Let us pacifists keep our principles as long as we are willing to demonstrate the same commitment to non-violent peacemaking that those who are prepared to sacrifice such principles are willing to demonstrate to military intervention to save lives. ■

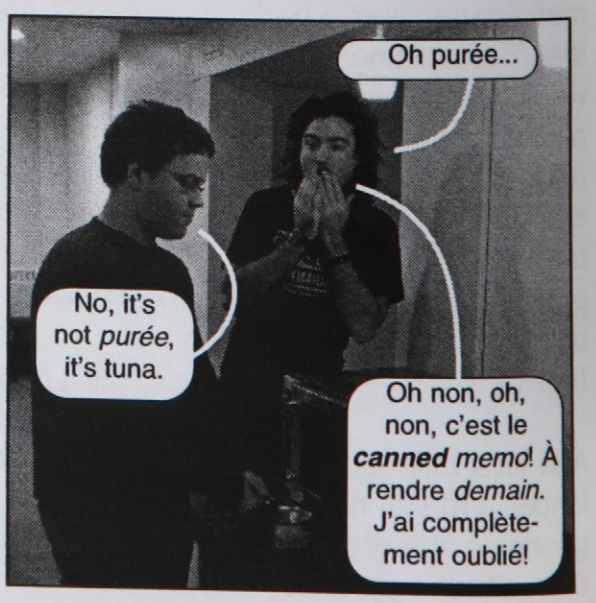


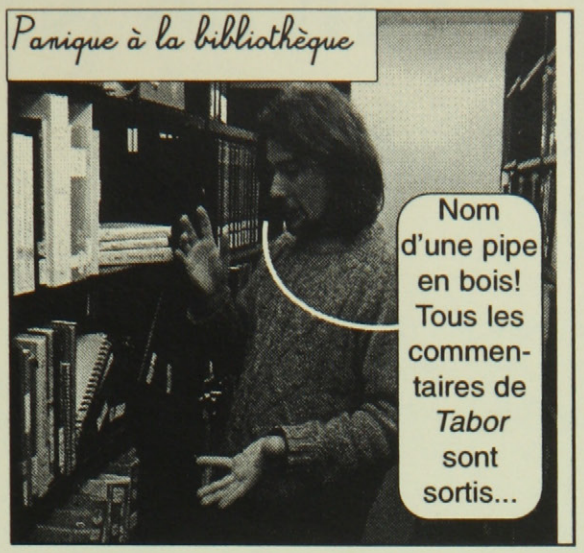


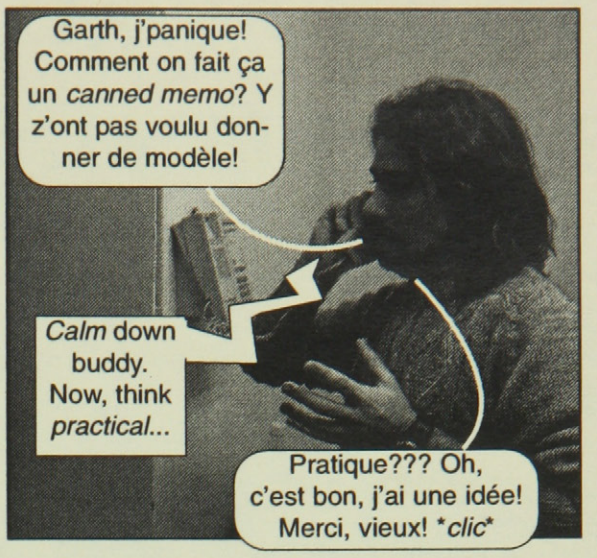


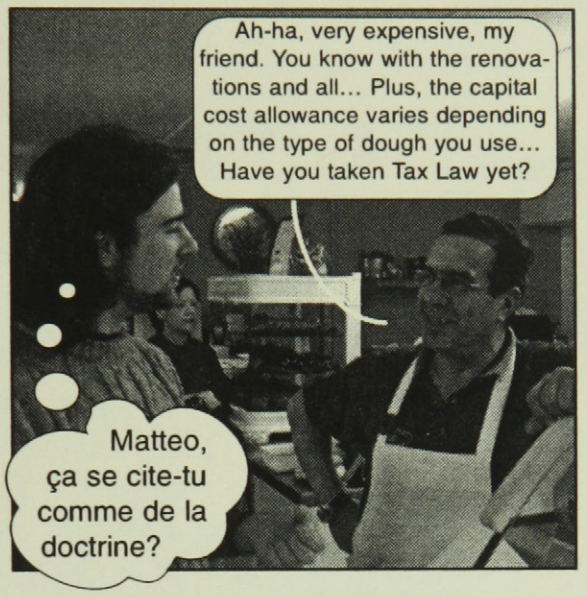


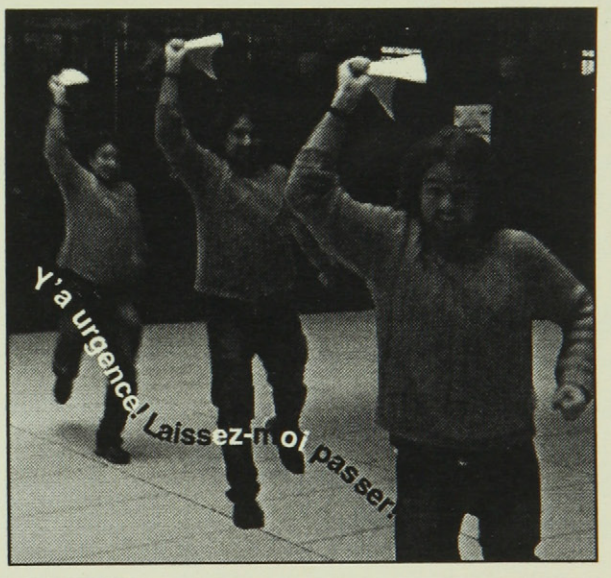












Max: Olivier Cournoyer Boutin (U1), **Garth:** Frédéric Wilson (U4), **TL**: Myriam Couillard-Castonguay (U3). **Figuration bienveillante:** Érika Bergeron-Drolet (U2), Matteo De Fazio. **Conception:** Marguerite Tinawi (U3) et Laurence Bich-Carrière (U4). ***Envie d'être à ce photoroman ce que Katie Holmes est à Tom Cruise? Contactez-nous électroniquement ou attrapez-nous dans les couloirs!***

To Judicial Board or Not to Judicial Board?

by Alexandre Shee (Law I)

Fellow Students, before addressing my Judicial Board hearing in a public forum, I wanted to take time to step back and truly reflect upon my case. I was wrongfully disqualified from an election and taken off the ballot the night before. Yet, it was not out of anger or vexation that I decided to launch my case. Rather, it was with the true desire that my unfair disqualification could somehow be used to benefit the LSA community as a whole. I think it is accurate to say that these elections where mismanaged and badly handled. However, I distinguish in my reasoning that my disqualification was not indicative of the overall poorly ran process but rather of a fundamental problem with the Constitution and By-laws. Every one of our representatives is elected following the rules set out by the Constitution and By-laws. This may seem obvious, yet it is crucial to why I brought my case in front of the Judicial Board. In fact, every truly important decision that concerns us within this faculty is made by officials who carry a legitimacy strongly enhanced and solidly founded on a democratic process. Yet, our Constitutions and By-laws are unclear, unhelpful, and simply outdated in the present electoral context. They need to be looked at from our perspective, and with the goal of making elections fundamentally "free and fair". Moreover, as active and informed students, we are disgusted to witness unfair elections in countries with which we have no link, yet we are oblivious to the unequitability that affects us locally and directly. We all seem apathetic to the effect this inequity has on our choices within our time in law school. Moreover, as a community we have been unreceptive to the idea of even glancing upon rules that govern aspects of our student life. Democracy, whether in the US recount of 2000, the last elections in Mexico, or in 2006 at McGill, or here in the law faculty, must be protected and held fair and equitable. We must demand that this fundamental right not be submitted to the inadequacies of a process both badly conceived and poorly applied. Rather, we should commend the opportunity to construct something better. The ruling of the Judicial Board must not simply be seen as the outcome of a bureaucratic process, but rather as a positive opportunity for all of us. The Judicial Board ruled that I should not have been disqualified, and prescribed a remedy that I believe is imperative: not new elections, which would continue to divide the first year class, but rather the request for a Constitutional committee to review and reform the rules pertaining to elections in the By-laws and Constitution. I believe that by requesting a remedy that benefits us all, the division, bitterness, and confusion created by the elections could be transformed into a clear, positive tool to make our time here more constructive for us, and for students to come. I believe that as students of this institution, we must all leave our mark. I hope that our communal contribution will be that of making our school a safe haven for the democratic process. We all can contribute by submitting testimonials, and more importantly solutions to be used by the Constitutional Committee in the revision and reform of the rules of our democracy. The hearing(s) are public and I urge everyone to come listen and contribute.

***On a more personal note, I would like to thank Sandrina Antoni, my student advocate, for her wholehearted help, dedication, diligence, and overall empathy. I believe that she was fair, honest and exemplified distinction. She handled this with tremendous respect and I want to communicate my most sincere gratitude■